IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.246 OF 2007.
AND
SECOND APPEAL NO.247 OF 2007.

Harishchandra Dattaram Malik ...Appellant
(In both the Appeals)

Versus

Ashok Shantaram Nanodkar ...Respondent
(In both the Appeals)

Shri G.H.Keluskar for the Appellant in both the Appeals.

Shri S.B.Shetye for the Respondent in both the Appeals.

CORAM : ABHAY S.OKA, J.
DATED : 03rd December, 2007.

P.C.:

1. Second Appeal No.246 of 2007 arises out of suit for possession filed by the respondent. The case of the respondent is that the appellant was his monthly tenant in respect of the suit property. According to the respondent, the tenancy of the appellant was determined by legal notice dated 19th April, 2004. Therefore, the respondent prayed for possession.

2. Second Appeal No.247 of 2007 arises out of the suit filed by the appellant for declaration and injunction. The declaration claimed is that the appellant is the permanent tenant of the suit property. Therefore, consequential relief of perpetual injunction was prayed in the said suit. The said suit filed by the

appellant was party decreed. The trial Court rejected the prayer for declaration. However, the trial Court granted a decree of perpetual injunction restraining the defendants therein from interfering with the appellant's possession over the suit property except in accordance with due process of law. An appeal preferred by the present appellant for challenging the said decree has been dismissed.

3. The suit filed by the respondent for eviction was decreed by the trial Court and appeal preferred by the present appellant in the District Court has been dismissed.

4. The contention of the learned advocate for the appellant is that the agreement dated 14th October, 1988 shows that a lease in perpetuity was granted in favour of the appellant. He submitted that such a lease could not have been determined by the notice under section 106 of the Transfer of Property Act, 1882. He, therefore, submitted that the courts below have committed an error by passing a decree for possession against the appellant and by dismissing the suit filed by the appellant for a declaration of permanent/perpetual lease.

5. I have carefully considered the submissions. It

is an admitted position that the Agreement dated 14th October, 1988 is not registered in accordance with the provisions of the Indian Registration Act, 1908. As the said document is a compulsory registerable document in view of section 107 of the said Act of 1882, the said document is not admissible in evidence. Therefore, the tenancy of the appellant will be deemed to be a month to month tenancy.

6. There is no dispute regarding service of notice of determination of tenancy as required by section 106 of the said Act of 1882. Hence, the courts below were justified in passing a decree for eviction. It is obvious that declaration could not have been granted in favour of the appellant as prayed.

7. No substantial question of law arises. Second Appeals are accordingly dismissed.

8. On the prayer made by the advocate for appellant, the decree for possession shall not be executed for a period of three months from today subject to condition that the appellant will not create any third party interests in respect of the suit premises and will not part with possession thereof.

JUDGE